

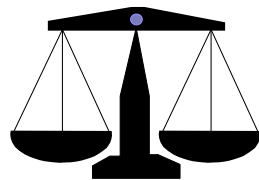
# CITY OF CINCINNATI

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## Eleventh Status Report to the Independent Monitor

February 12, 2005



## Cincinnati Police Department

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## I. INTRODUCTION

In April 2001, the Mayor of Cincinnati, and other interested persons within the City, requested the United States Department of Justice (DOJ) to conduct a review of the Cincinnati Police Department's (CPD) policies and procedures, specifically those that related to the uses of force. This request indicated the City's commitment to minimizing the risk of excessive Use of Force in the CPD and to promoting police integrity. In response to these requests, the DOJ launched an investigation pursuant to authority granted under 42 U.S.C. 14141, the Violent Crime Control and Law Enforcement Act of 1994.

The DOJ's investigation, conducted with the full cooperation of the City, included extensive interviews with City and CPD officials, CPD officers, leaders of the Fraternal Order of Police (FOP) and the African-American police officers' association (Sentinels), community members and civil rights organization representatives.

At the close of the investigation, which lasted approximately one year, the DOJ determined that the jurisdictional requirements of 42 U.S.C. 14141 were sufficiently satisfied to permit the Parties to enter into the **Memorandum of Agreement (MOA)**. As a result of the City's and the CPD's high level of voluntary cooperation and willingness to implement meaningful change, the DOJ believed the MOA, rather than contested litigation, represented the best opportunity to address the DOJ's concerns. On April 11, 2002, history was made in the City of Cincinnati. The City of Cincinnati and the United States Department of Justice entered into the landmark Agreement.<sup>1</sup>

At the same time, representatives for the City, the Cincinnati Black United Front (CBUF), the American Civil Liberties Union of Ohio (ACLU), and the Fraternal Order of Police (FOP) executed the **Collaborative Agreement (CA)**. Brought about in part by a series of legal actions citing patterns of discrimination by police, this latter Agreement also served as an alternative to court litigation. Under this Agreement, the Federal District Court introduced a process where various stakeholders in the community could examine the broader social conflicts in the City by gathering the views of as many citizens as possible on improving the relationship between police officers and the community. Through the distribution of questionnaires and a series of public meetings involving different segments of the community, the following goals became the cornerstones of the Collaborative Agreement:

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<sup>1</sup> Neither the City's entry into this Agreement, nor its decision to implement changes in CPD policies and procedures is an admission by the City, the CPD, or any officer or employee of either, that any of them have engaged in any unconstitutional, illegal, or otherwise improper activities or conduct.

1. Police officers and community members will become proactive partners in community problem solving.
2. Police officers and community members will build relationships of respect, cooperation, and trust within and between the police and the citizens.
3. Police officers and community members will work to improve education, oversight, monitoring, hiring practices, and accountability of the Cincinnati Police Department.
4. Police officers and community members will ensure fair, equitable, and courteous treatment for all by members of the police department.
5. Police officers and community members will create methods to establish the public's understanding of police policies and procedures and to recognize exceptional service provided by members of the police department.

Implementation of both Agreements will not only reform police practice, but will enhance trust, communication, and cooperation between the police and the community. The settlements have fostered a union that has motivated all segments of the community to come together and focus on building the positive and productive relations necessary to maintain a vibrant city core and surrounding metropolitan area. The City of Cincinnati is enthusiastic and committed to this endeavor and has already begun initiatives to involve virtually all City departments in the process.

The two Agreements will be overseen by an Independent Monitor. Consistent with the consensus decision-making process incorporated in the collaborative process, all collaborative partners unanimously selected the independent monitor.

## **I. GENERAL POLICIES**

### **A. Mental Health Response Team (MHRT)**

The MOA's requirements with regard to the MHRT are located in paragraph 10.

#### Monitor's Previous Assessment

The Monitor has consistently commended the CPD for its MHRT program. The Monitor has determined that the CPD is appropriately handling MHRT incidents and is in compliance with the MOA requirements with respect to policy, training, and in actual practice.

#### Status Update

##### ➤ **Training**

In early November, the Police Academy, in partnership with mental health professionals, conducted a 40-hour training course for 27 new MHRT officers. This brings the total number of certified MHRT officers to 126. A copy of the training schedule is included in Appendix Item 1.

##### ➤ **MHRT Availability**

To ensure the availability of MHRT officers 24/7 and city-wide, the CPD continues to track the number of MHRT officers deployed on a daily basis. The tracking process allows the CPD to take a look at MHRT staffing levels by shift, district, and department-wide. According to the October, November, and December staffing reports, the CPD was able to provide consistent MHRT service. The MHRT staffing reports are included as Appendix Item 2.

##### ➤ **MHRT Officer Dispatch Summary**

Effective May 1, 2003, the Police Communications Section began to record the dispatch disposition of MHRT officers to all calls involving suspected mentally ill individuals. When dispatching these calls, the dispatcher makes an entry into a designated field for all MHRT calls, indicating one of the following dispositions:

- MHD - A MHRT unit was dispatched to the call.
- MHNA - A MHRT unit was not dispatched because all MHRT units city-wide were busy.
- MHNW - There were no MHRT units working in the city.

During this reporting period, the CPD received 1,548 calls involving mentally ill persons. In 143 of those instances, the call did not meet the criteria for dispatch and was cancelled or the call was handled by another agency. In 221 cases, the call was dispatched as another incident type and later changed to a MHRT by the responding officers. An additional 37 calls handled were categorized as "unknown." This equates to 1,147 calls eligible for MHRT officer dispatch. For 1040 of the calls, a MHRT officer was dispatched. For this reporting period, there were only 19 calls for which an MHRT officer was working but not available for

dispatch, and there were two instances for which a MHRT officer was not working. A monthly analysis of these calls is included in Appendix Item 3.

➤ **Mobile Crisis Team Workers**

The Psychiatric Emergency Services Department of University Hospital continues its partnership with the CPD. This partnership has enabled Mobile Crisis Team personnel to work within police districts in conjunction with police personnel. Currently, the program operates in Districts One and Five.

For the fourth quarter of 2004, statistics were maintained for individuals in both districts who could be identified as being in need of mental health services. Identification is made through an incident history, police reports (Form 316), or by hospital records. Information regarding the number of MHRT runs handled by police, the Mobile Crisis Team, or a combination of both is also tabulated. Once an individual has been identified, social demographic data regarding the subject and the outcome of each incident is documented and entered into a database in each of the districts.

<b>2004 Fourth Quarter</b>	<b>District One</b>	<b>District Five</b>
Total runs	249	196
CPD only	176	120
Mobile Crisis Team only	23	24
CPD assisted by the Mobile Crisis Team	37	40
Mobile Crisis Team assisted by CPD	13	12
Total individuals identified	179	146
Mobile Crisis Team consultations	10	3

**B. Foot Pursuits**

The provisions of the MOA related to foot pursuits are located in paragraph 11.

Monitor's Previous Assessment

The Monitor has determined that the CPD is in compliance with this provision with respect to policy, training, and actual practice.

Status Update

Supervisors continually review foot pursuits in every Use of Force report in relation to the chase being tactically sound and in conformance with the CPD's policy and procedure. The tactical and risk considerations involving foot pursuits were reiterated this quarter during roll call training on December 17, 2004. The related roll call training calendars are included in Appendix Item 23.

### **III. USE OF FORCE POLICY**

#### **A. General Use of Force Policies**

The MOA's requirements pertaining to use of force are located in paragraphs 12 and 13.

##### Monitor's Previous Assessment

The Monitor concluded the CPD's current Use of Force policy is in compliance with the MOA.

#### **B. TASER Implementation**

##### Monitor's Previous Assessment

Last quarter, the Monitoring Team reviewed 30 of the 198 reported TASER incidents (a 15% sample size). In 25 of the 30 incidents, the Monitor concurred with the CPD's assessment that the initial contact and force used was consistent with policy, training, and state law. In the remaining five reports, the Monitor makes no determination due to what he believes is insufficient information.

Based upon his review of the 30 cases, the Monitor expressed the following reservations over TASER usage:

- "There have been subject injuries from TASER use this quarter, particularly from the fall to the ground...."
- The Monitor states, "...officers should not use TASERS in situations where force is not necessary. A decrease in officers' communications skills would be a detriment to the City and the community." The Monitor goes on to say that TASER deployments merits careful monitoring and evaluation by the CPD, "to ensure that officers are properly considering alternatives to force such as de-escalation, verbal commands, or arrest control techniques."
- The Monitor states, "...there appear to be situations where officers are drawing and displaying their TASERS as they approach the subject, even before any verbal commands are given or communications are made..."
- The Monitor notes that "officers might not be giving subjects sufficient time to comply with commands, prior to a second or subsequent deployment of the TASER."

##### Status Update

The CPD disagrees with the Monitor's findings in the five cases in which he did not make a compliance determination. We will first refute these cases, and then address the additional issues raised by the Monitor.

#### Case 2004-0547

No determination made because the Monitor could not determine the specific basis for the stop (initial contact). The Monitor writes, “It is important to understand why the subject was being pursued to balance the need to use force against the offense for which the subject is being sought.”

#### CPD’s response

The Monitor’s summary of the incident reads, “**An officer approached a subject who had committed a pedestrian violation.** (Emphasis added) The subject initially began to walk quickly away from the officer and then began to run. The officer pursued the subject, commanded that he stop, and gave a warning of impending force.”

It is clearly evident the basis for the initial contact was a pedestrian violation.

#### Case 2004-0554

No determination was made because the Monitor was concerned about a drive stun to a handcuffed prisoner. The Monitor writes, “The inability to protect oneself from injury due to falling is not addressed and it is unknown what precautions, if any, were taken by the officers.”

#### CPD’s response

Officers were attempting to place a prisoner in the backseat of the police cruiser. The prisoner tensed his body and would not get into the vehicle. The officers gave several commands, including a warning of pending TASER usage. The officers are next to the prisoner. Naturally, they are in a position to control the prisoner’s movements once he is tased. The cruiser itself would offer leverage for the prisoner.

#### Case 2004-0684

No determination made by the Monitor because the report “fails to indicate the distance from which the second TASER was deployed.” The Monitor states, “This is relevant in determining why the TASER missed its intended target. As both TASER deployments were ineffective, examining this issue is important for CPD’s review. Because the reporting in this case failed to provide all the information necessary to determine consistency with policy and procedure, (he) is unable to conclude compliance with respect to this incident.”

#### CPD’s response

Although this omitted information is important for the CPD to conduct a review of tactics in this situation, it does not have a bearing on whether the use of the TASER



was proper and consistent with CPD policy<sup>2</sup>, i.e. whether the initial contact and force used conformed to policy.

#### **Case 2004-0705**

No determination was made because the report does not document why the subject was tased for an additional three seconds (eight seconds instead of five).

#### **CPD's response**

The CPD's use of force procedure does not mandate the minimum or maximum number of cycles for a TASER deployment. The force used must be "reasonable." Although there was no explanation given on the report as to why the TASER was deployed for three extra seconds, this is not material enough to show the force used was improper or excessive. The arrested subject was uninjured and no complaint of excessive force was made.

In addition, the Monitor reviewed case 2004-0615. The Monitor concurred with the findings of the CPD (force used was within Department policy) even though he notes that "in reviewing the TASER log it appears that the burst striking the back of the subject lasted for a total of 10 seconds." In this case, the Monitor's assessment was apparently not affected by this issue.

#### **Case 2004-0735**

No determination was made because, among other things, the Monitor states:

- "It appears that the officers approached the subject with their TASERS already drawn and readied to fire. While this may be a sound tactical decision in some instances, in this case it may have exacerbated the subject's hostility, and he immediately took an offensive stance."
- "There does not appear to have been any verbal warning given to the subject about the pending use of the TASER."
- "What would the affect on the subject have been if both officers had successfully deployed the weapon and simultaneously fired bursts into the subject? While one officer deployed his weapon with a five second burst, the second officer fired an 11 second burst. The officers' simultaneous deployments raise questions about the soundness of the tactics."

#### **CPD's response**

The narrative on the TASER incident report (Form 18TBFP) reads (in part),

"Officers Michael Williams and Jason Rees observed Mr. Roy Taulbee engaging in turbulent behavior by screaming and yelling profanity. Officers Williams and Rees attempted to calm Mr. Taulbee down and advised him to leave the area. Mr. Taulbee took a fighting stance and stated, "If you (expletive) TASER me, I'm going to (expletive) you up. Mr. Taulbee began

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<sup>2</sup> The policy does not address the distance issue for TASERS (Procedure 12.545).

flailing his arms and clinching his fists into a ball. Mr. Taulbee grabbed and attempted to dislodge Officer Williams' TASER."

The officers' arrest report mirrors the Form 18TBFP.

As addressed in the CPD's response to the draft Report, the CPD questions the Monitor's ability to infer that the officers approached the subject with their TASERS already drawn and readied to fire.

In regards to the lack of verbal warning of impending force, it is evident from the facts that the subject, without provocation, grabbed and attempted to dislodge the officer's TASER.

Procedure requires an officer to give warning of impending TASER usage "unless it would present a danger to the officer." In this case, it would appear because of the suddenness of the subject's attack, the officer did not have time to issue a verbal warning.

With respect to the Monitor's comments about the simultaneous deployments, the CPD does not agree that this presented a tactical problem. Both officers recognized the threat and acted promptly to neutralize it. The issue of the Monitor questioning tactics is further discussed below.

#### **Additional Issues Based Upon the Monitor's Comments**

- **Injuries**

The Monitor is concerned about injuries sustained to subjects as a result of TASER usage.

#### **CPD's response**

At this point, it is important to review the following use of force figures:

#### **Use of Force<sup>3</sup>** **01/01 to 12/31**

	<b>2003</b>	<b>2004</b>	<b>Change</b>
<b>Chemical irritant</b>	485	157	
<b>Physical Force (18F, 18I, 18NC)</b>	327	158	-52%
<b>PR24</b>	17	1	
<b>Beanbag/Foam</b>	4	1	
<b>Pepperball</b>	9	1	
<b>TASER</b>	3	595	
<b>Canine</b>	11	13	
<b>Firearms</b>	2	5	
<b>Totals</b>	858	931	+8.5%

<sup>3</sup> Use of Force statistics for the current reporting period have been included in Appendix Item 4

The most impressive figure in this table is the 52% reduction over last year in instances where officers had to engage noncompliant subjects. The TASER has reduced the need for officers to have physical, often violent, encounters with resistive subjects.

Prior to the TASER, officers were forced into hands-on contact with aggressive subjects, resulting in an increased probability of serious injury - not only to the subject, but the officer as well. Even after chemical irritant deployments, many combative subjects are able to fight through its effects.

The number of injuries to suspects/prisoners has dropped dramatically between 2003 and 2004:

**Suspect/Prisoner Injuries Resulting from Police Contact<sup>4</sup>**

	<b>02/01/03 – 12/31/03</b>	<b>02/01/04 – 12/31/04<sup>5</sup></b>
<b>Hard hands with injury and foot pursuits</b>	204	90
<b>Beanbags</b>	1	0
<b>Pepperball</b>	9	0
<b>40 mm foam</b>	0	0
<b>TASER</b>	0	85
<b>Other force<sup>6</sup></b>	85	19
<b>Totals</b>	299	194

The table highlights a **35% decrease** in injuries to suspects/prisoners over last year.

Additionally, **injuries to officers resulting from arrest and assault dropped 56%** from 2003 to 2004 (64 in 2003 versus 28 in 2004).

In the fourth quarter of 2004, there were 148 TASER deployments. There were 23 minor injuries to subjects associated with these incidents, mostly minor abrasions and cuts. Three other injuries resulted in a fractured collarbone, fractured wrist, and dislocated shoulder. Injuries from TASER deployments are summarized in Appendix Item 5.

The ratio of injuries to TASER deployments, and their severity, has remained consistent throughout 2004.

While on the subject of use of force and comparisons with the previous year, it is important to address the increase in use of force incidents. Although use of force has increased 8.5% over 2003, there are a few factors to consider:

<sup>4</sup> Does not include ingestions of contraband, injuries sustained to prisoners as a result of a vehicle crash from a pursuit, injuries from canine bites, etc. (any injury where the TASER would not have been a force option in an incident is not included). In regards to contraband, suspects normally swallow contraband before the officer comes in contact with them.

<sup>5</sup> Aggressive implementation of the TASER began in February 2004

<sup>6</sup> Includes strikes, kicks, PR 24, firearms

- Total arrests increased 2% over last year (37,061 in 2003 versus 37,818 in 2004).
- Drug arrests increased 8% over last year (11,057 in 2003 versus 11,920 in 2004).

The figures show drug arrests account for nearly a third of total arrests. A review of TASER incidents shows that a significant number of deployments were connected with drug investigations.

- **Subsequent Deployments of the TASER**

The Monitor is concerned that officers “might not be giving subjects sufficient time to comply with commands, prior to a second or subsequent deployment of the TASER. The Monitor cites two cases to support his concern, in which there is no indication that additional warnings were given prior to a subsequent deployment. The Monitor suggests that the subjects may have not had an ample opportunity to comply. He does note, however, that the use of the TASER in both incidents conformed to CPD policy.

CPD’s response

The CPD concurs with the Monitor that the investigating supervisors should have identified these issues in their investigations. This matter has been addressed during the recent in-service training for supervisors.

- **Questioning the Appropriateness of Force**

The Monitor states “officers should not use TASERS in situations where force is not necessary.” The CPD should ensure that officers are “properly considering alternatives to force such as de-escalation, verbal commands, or arrest control techniques.”

CPD’s response

In each use of force report, the following information is documented:

- 1) Decision to arrest, including the basis for the stop and seizure
- 2) How the subject resisted arrest
- 3) Subject’s resistive behavior
- 4) Officer’s tactics and actions to counter the resistance/assault
- 5) The supervisor’s analysis of the propriety of the officer(s)’ use of force

Each report also addresses verbal commands (asked, told, demanded, and warning of impending force) given to the noncompliant subject.

If there is a problem with an arrest, processes are in place to address and correct the matter by management.

In regards to “de-escalation”, during the last quarter, 54% of TASER deployments occurred as a result of a foot chase.<sup>7</sup> The majority of foot chases involve subjects fleeing from police during drug investigations. Generally, the subject has contraband on his/her person in these cases. What is expected in these situations – for the officers to “de-escalate” and hope they can persuade the subject to stop and voluntarily submit to arrest by merely issuing verbal commands? Surely, that would be unrealistic.

### **Tactics**

In the previously mentioned case 2004-0735, the Monitor questions the tactics used by CPD officers. There are other cases as well, from current and previous quarters, where the Monitor does the same. Similarly, as mentioned before, the Monitor questions whether force was necessary in certain situations. The CPD believes that this after-the-fact assessment is inconsistent with the Monitor’s role, as defined in the Agreement (see case 2004-0590).

By questioning the need for force and tactics used by the officer(s), the CPD believes the Monitor is in violation of paragraph 98 of the Agreement, which reads:

The Monitor will only have the duties, responsibilities, and authority conferred by this Agreement. **The Monitor shall not, and is not intended to, replace or take over the role and duties of any City or CPD employee.** (Emphasis added)

At minimum, this issue stresses the need for a set of agreed upon compliance standards and monitoring plan.

In each use of force report, the investigating supervisor assesses the propriety of force used and the tactics used during the incident. The purpose of this CPD review is to not only determine whether the force used was consistent with policy and procedure, but also, with respect to tactics, to establish a process of continuous improvement. The tactics used by an officer in a particular incident may have been appropriate and had the desired outcome, but there may have been a better way (safer, more efficient) to accomplish the same means. Supervision then shares this “best practice” review with the involved officer(s) as well as other officers.

The investigation report makes it way through additional levels of review, including the district/unit lieutenant and the district/unit commander before a critical review is done by the Inspections Section. The Police Chief then reviews and approves Inspections’ investigation of the incident.

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<sup>7</sup> See Appendix Item 6 for a list of TASER deployments involving foot pursuits

In *Graham v. Connor*, the Court stated:

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody [490 U.S. 386, 397] allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

In the case of an excessive force complaint, the CPD’s Internal Investigations Section conducts a complete investigation and submits its findings to the Police Chief. The Chief reviews each recommendation for closure and approves it or sends it back to IIS for further review.

A separate review also exists through the CCA. Each complaint of excessive force is directed to the CCA regardless of where it was initially filed. The CCA has jurisdiction over these complaints. A CCA investigator investigates the complaint and presents his/her findings to the CCA Director. The CCA Director then reviews the report and presents the findings to the CCA Board. The Board votes to accept or reject the findings. If the CCA’s findings conflict with the CPD’s, the City Manager acts as an arbiter in determining the final disposition of the case.

The CPD believes that it shares responsibilities, along with the CCA, in determining whether a use of force incident was appropriate and reasonable. Further, we refer the Monitor to MOA paragraph 102 in regards to use of force and citizen complaint investigations.

The CPD believes the Monitor’s review of use of force investigations should be limited to determining whether the “process” is in place to ensure that each use of force investigation was reviewed through each level of the chain of command. The CPD has made this argument to the Monitor on multiple occasions.

Therefore, the CPD recommends that this issue be addressed in the court-facilitated meetings provided by United States Magistrate Judge Michael R. Merz.

### **C. Chemical Spray**

MOA provisions pertaining to chemical spray are found at paragraphs 14, 15, and 16.

#### **Monitor’s Previous Assessment**

##### **a. Policy**

The CPD’s policies regarding the use of chemical spray comply with the MOA.

## **b. Review of Sample Investigations**

### **i. Warning that force would be used**

The Monitor could not conclude compliance with this provision due to six of the twenty chemical spray reports not documenting a verbal warning or exigent circumstances warranting a lack of warning.

### **ii. Spray of restrained individuals**

No compliance determination was made by the Monitor. The Monitor reviewed seven incidents where chemical spray was used on restrained individuals. In five of the seven, the use of chemical irritant was consistent with the MOA requirements. In the remaining two, the use of force was inconsistent with CPD policies. However, the issue was addressed in the CPD's review of the incidents. The Monitor commended the CPD for its investigations and corrective action.

The CPD questions the Monitor's standard here. In the August 13, 2004 draft, "Benchmarks and Standards for Defining MOA Compliance," the Monitor states, "Compliance with the requirement in individual incidents should be the norm, with any deviations being infrequent, identified by CPD, and corrected." Again, we look forward to the discussion ensuing from court-facilitated meetings.

### **iii. Duration of spray, targeting of spray, decontamination**

The Monitor's review of the durations and targeting of chemical spray finds that the CPD is in compliance with these MOA provisions.

## **Status Update**

There were 17 deployments of chemical irritant for the fourth quarter. They have been summarized in Appendix Items 7, 8, 9, 10, and 11. Of the 17 reports, two do not document a warning of impending force (2004-51830 and 2004-51928). The former report explains the exigent circumstances which existed justifying why no warnings were given.

Back in August 2004, wallet-size, laminated reminder cards were issued to each supervisor outlining the information needed in each use of force report. Officers were also reminded about the warning requirement. The CPD believes these two steps have contributed to the improvement in reporting this period.

## **D. Canine**

The MOA provisions relating to canine policy are located in paragraph 20.

## Monitor's Previous Assessment

### **a. Policy**

The Monitor found that the current CPD canine policy meets the MOA provisions.

### **b. Canine Deployments**

In the last quarter, the Monitor Team reviewed 145 Canine Deployment Forms for incidents in which the canine was deployed but no bite occurred. The Monitor determined the CPD Canine Unit was in compliance with the MOA requirement that canine searches be authorized by supervisors.

The Canine Unit also complied with the MOA requirement that off-leash deployments be limited to commercial buildings or for suspects wanted for an offense of violence or reasonably believed to have a weapon.

The Monitor also noted that CPD has identified a problem with consistently documenting the announcement requirement on the deployment forms. The CPD is addressing the problem.

### **c. Review of Investigations**

The Monitor reviewed eight canine bite investigations from 2003 and 2004. The Monitor noted that each case was consistent with MOA requirements.

The fact that the Monitor continues to not make a compliance determination with respect to deployments and investigations continues to be a point of frustration because the lack of determination fails to provide the CPD a chance to cure or correct.

## Status Update

During this reporting period, the CPD had five incidents involving a canine bite. The first occurred on December 4, 2004. This incident occurred after an aggravated auto robbery offense involving a handgun. A canine officer spotted and attempted to stop the stolen vehicle. The suspect refused to stop for the officer and a short pursuit was initiated. During the pursuit, a police sergeant authorized an off lead deployment (since a handgun was used in the original offense) in the event the driver fled from the vehicle. The suspect did indeed flee from the vehicle moments later. The canine officer ordered the subject to stop running and warned that the canine would be deployed if he did not comply. The suspect failed to comply with the officer's orders resulting in deployment. The canine immediately found the suspect in a rear yard of a residence. The canine bit the suspect on his upper right arm. The canine officer immediately called off his partner, only to have the suspect again attempt to flee on foot. The canine then re-engaged the suspect, but only took hold of the suspect's clothing. The suspect complied with the officer's orders and the canine was recalled. The suspect was arrested without further incident. He was treated and released from the hospital.



The second canine bite occurred on December 17, 2004. This incident occurred as the result of a robbery at a fast food restaurant. The suspect fled the scene on foot. A police sergeant authorized a canine officer to initiate an on lead track of the suspect. An announcement warning was given prior to deployment. After a lengthy track, the canine officer observed the suspect running through several rear yards approximately 100 feet in front of the canine team. The canine officer gave a second warning. The canine tracked to a side porch of a residence and engaged the suspect, who was lying prone behind several trash cans. The suspect was bit on the left ankle and foot. The canine was immediately recalled once the suspect complied with the officer's orders. The suspect was arrested without further incident. He was treated and released from the hospital.

The third canine bite also occurred on December 17, 2004. This incident occurred after a home invasion robbery where two suspects removed firearms from the residence and fled on foot. A police sergeant authorized a canine officer to initiate an on lead track of the suspects. No announcement warning was given due to the suspects possibly still being armed. The canine located one of the suspects hiding under a vehicle. For the safety of the officers, no verbal warning of impending force was given. The canine bit the suspect on his right shoulder and bicep. The suspect complied with the canine officer's orders, at which time the canine was immediately recalled. The suspect was arrested without further incident. He was treated and released from the hospital.

The fourth canine bite occurred as the result of the aforementioned home invasion robbery. Approximately 30 minutes after locating the first suspect, the same canine team located the second suspect hiding in a vehicle parked in a detached garage. The suspect failed to comply with three separate orders and warnings of impending force given by the canine officer. The canine was deployed into the vehicle, where it engaged the suspect by biting him on his right shoulder and bicep. The suspect then complied with the officer's commands and the canine was immediately recalled. The suspect was arrested without further incident. The bite did not penetrate the suspect's heavy clothing. He was transported to the hospital where doctors confirmed he had no injuries from the bite.

The fifth canine bite also occurred on December 17, 2004. This incident occurred as the result of three suspects fleeing from a vehicle wanted in connection with an aggravated robbery. A firearm was used in the original offense. A police sergeant authorized a canine officer to initiate an on lead track of the suspects. No announcement warning was given due to the suspects possibly still being armed. The canine tracked one of the suspects to a rear yard behind a barber shop. The suspect was concealed in some bushes. The canine engaged the suspect by biting him in the buttocks. The suspect complied with the canine officer's orders, at which time the canine was immediately recalled. The suspect was arrested without further incident. He was treated and released from the hospital.

Canines were deployed in connection with 148 incidents during this quarter. As a result, 25 individuals were located with 5 of those suspects being bitten by a dog. This equates to a 20% unit bite ratio. The statistics generated by the Canine Deployment Database have been included in Appendix Items 12 and 13.

A review of canine deployment forms this quarter found that handlers are consistently addressing the warning issue in their narratives.

The canine bite ratio reports generated pursuant to MOA paragraph 20 are included in Appendix Items 14, 15, and 16. These reports examine the following six-month periods:

May 1, 2004 – October 31, 2004  
June 1, 2004 – November 30, 2004  
July 1, 2004 – December 31, 2004

Bite ratios for these periods remain below the 20% unit threshold.

It should be noted that the CPD Canine Squad successfully defended their first place ranking (two years in a row) at the U.S. Police Canine Association national field trials held in Huntsville, Alabama, in November. The U.S.P.C.A. describes its national trials as “the testing and ranking of the best of the best.” The CPD competed against 140 teams from the United States and Canada in categories of obedience, agility, search, and apprehension.

#### **E. Beanbag Shotguns / 40mm Foam Rounds / Pepperball**

The MOA provisions relating to beanbag shotguns and 40mm foam rounds are located in paragraphs 21, 22, and 23.

##### Monitor’s Previous Assessment

The Monitor found the CPD to be in compliance with the MOA requirements relating to the beanbag shotgun. No mention was made regarding the 40 millimeter and Pepperball launcher.

##### Status Update

During the fourth period, there were no incidents involving the deployment of the 40 millimeter and beanbag shotgun. There was one deployment of the Pepperball launcher.

## **IV. INCIDENT DOCUMENTATION, INVESTIGATION & REVIEW**

### **A. Documentation**

The MOA provisions relating to documentation are located in paragraph 24.

#### Monitor's Previous Assessment

In the previous report, the Monitor found the CPD to be out of compliance with the force incident reporting provisions. Specifically, the Monitor cited the following CPD reporting practices:

#### ➤ **Form 18NC – Non-Compliant Suspect Arrestee Report**

The Monitor reviewed 16 Non-Compliant Suspect/Arrestee Reports. All but one contained a narrative that sufficiently described the circumstances that led to the application of force during the arrest or detention of a subject. Of the 16 reports reviewed, eight included a supervisor's narrative that indicated their review of the incident and a concurrence with the force used to gain suspect control and/or compliance.

The remaining eight reports included a supervisor's signature arguably evidencing review, but did not include a supervisor's written evaluation of the officer's use of force. Therefore, the Monitor determined the CPD was not in compliance with this MOA requirement.

#### ➤ **Takedowns with Injury**

The Monitor reviewed eight Injury to Prisoner investigations. In seven of the eight cases, the Monitor determined that the use of force was consistent with the Agreement.

In the remaining case, 2004-0519, the Monitor states, "...a determination regarding the level of force used is not possible because no specific statements were included from any of the witnesses that would clearly corroborate the officer's statement (the interviews were not taped). Additionally, there is no indication the subject was interviewed."

The Monitor makes the comment in many of the investigations that the interviews were not taped and there is no indication the arrested subject was interviewed.

#### ➤ **TASERS**

The Monitor has determined that the CPD has not complied with the documentation requirements for TASER deployments. Specifically, the Monitor states that paragraph 24 requires the officer(s)' taped statement in all use of force investigations. The Monitor also cites paragraphs 29 and 30, which states all

officers who witness a use of force or injury to prisoner provide a statement regarding the incident, and that investigating supervisors interview other witnesses.

#### Status Update

##### ➤ **Form 18NC – Non-Compliant Suspect Arrestee Report**

This issue of supervisors providing a written assessment indicating review and evaluation of the officer's actions was discussed during the fourth quarter in-service training for supervisors. It is believed this issue will be corrected in the upcoming quarters.

##### ➤ **Takedowns with Injury**

The Monitor's comments are disconcerting for two reasons. First, the CPD cites the Monitor's May 26, 2004 correspondence to the DOJ and the City outlining the reporting of takedowns with injury:

(in part)

“For a six month period, starting July 1, 2004, CPD will investigate and report as follows for takedowns that result in injury, if the injury does not result in hospitalization. For such incidents, a supervisor will be called to the scene to conduct a supervisory investigation. The investigation will include interviews with all witnesses, including the subject(s), officer(s), medical treating personnel (if practicable) and third party witnesses. **The interviews do not need to be taped.** (Emphasis added). The report of the investigation will include the supervisor's narrative description of events leading to the use of force, and a description of the subject's resistance and each and every type of force used by the officer(s).”

The CPD would argue that they have met the reporting requirements outlined in this six month trial period set forth by the Monitor. The narrative does not require a recap of interviews, nor do the interviews have to be taped. For each witness identified on a use of force report, there is a check box as to whether their statement corroborates the officer's. If it doesn't, the supervisor explains the discrepancy.

Secondly, as to the Monitor's comments that there is no indication the arrested subject was interviewed, the CPD is perplexed as to why this is now an issue. The Monitor has never questioned in seven previous Reports whether an arrested subject identified on an Injury to Prisoner report or Chemical Irritant report was interviewed by the investigating supervisor. This is an example of the inconsistency in the Monitor's compliance determinations.

Per the January All Parties meeting, the CPD awaits the Monitor's preliminary assessment and feedback from the first three months of the trial period.

## ➤ **TASERS**

The CPD interprets Paragraph 24 differently. Paragraph 24 begins,

“The CPD will require all uses of force (except canine deployments that do not lead to a canine bite) to be **reported in the same manner as the CPD currently reports incidents it classifies as uses of force**, (emphasis added) except to the extent those reporting requirements have been modified by this Agreement.”

At the time of this Agreement, the CPD policy on TASERS did not require taped statements.

Further, paragraphs 29 and 30 address witnesses’ statements and how the investigating supervisor is to handle such statements. It also states that the CPD will make efforts to resolve material inconsistencies between witness statements. Investigating supervisors have always interviewed all parties connected with any use of force investigation. The fact that taped statements are not required in a TASER investigation does not mean interviews are not occurring.

As stated before, the Agreement does not require statements by the arrested subject or witnesses to be summarized in the narrative of the use of force report.

In reporting a use of force, the CPD policy requires the supervisor to conduct a preliminary fact finding interview of any witnesses and officers at the scene, and search for evidentiary materials. The supervisor is required to identify any discrepancy which occurs between the involved officer’s statement and any other witness or arrested subject’s statement. Any discrepancy is noted either on the use of force report itself or on a separate addendum report.

## **B. Investigation**

The MOA provisions relating to investigation are located in paragraphs 26, 27, 28, 29, 30, and 31.

### Monitor’s Previous Assessment

#### **a. Policy**

The CPD’s policies on investigating Use of Force incidents comply with the MOA.

#### **b. Review of Sample of Force Investigations**

The Monitor provides no compliance determination in this area. The Monitor reviewed 59 investigative files involving use of force incidents. He notes, “While many investigations were complete and thorough, others were not.” For example, the Monitor identified the following discrepancies:

- In four investigations, relevant witnesses were not interviewed or at least the interviews were not documented
- For all the TASER investigations, there is no indication that the subject was interviewed
- In two cases, the basis for the stop was not documented and explained
- Warnings of use of force were not provided in four TASER deployments

#### Status Update

The CPD is confident that its supervisors are conducting thorough and complete use of force investigations, including interviews. The CPD would encourage the Monitor to designate a member of his team to spend time shadowing field supervisors as they investigate these incidents. Perhaps that will give the Monitor a better idea of how field investigations mirror policy and training.

### **C. Review of Critical Firearms Discharges**

The relevant provisions of the MOA are located at paragraphs 32, 33, and 34.

#### Monitor's Previous Assessment

The CPD's policy on critical firearm discharges complies with the MOA. The Monitor reviewed a Firearms Discharge Board (FDB) Report from April 2004 and found it to be in compliance with the MOA.

#### Status Update

There were no firearm discharges at suspects in the fourth quarter of 2004. There are currently five outstanding investigations. Their status is as follows:

<b>Police Investigation Number</b>	<b>Status</b>
04-pi-01	FDB report was approved by Chief Streicher on January 25, 2005.
04-pi-02	FDB report was approved by Chief Streicher on January 13, 2005.
04-pi-03	FDB currently reviewing case.
04-pi-04	FDB report was approved by Chief Streicher on February 7, 2005. <sup>8</sup>
04-pi-05	FDB currently reviewing case.

<sup>8</sup> Copies of the FDB reports from 04-pi-01, 04-pi-02, and 04-pi-04 are included in Appendix Item 17

## **V. CITIZEN COMPLAINT PROCESS**

### **A. Openness of the Complaint Process**

Paragraphs 35 and 36 of the MOA deal with the openness of the complaint process.

#### Monitor's Previous Assessment

The Monitor made no compliance determination for this provision. The Monitor noted that several MOA provisions were in compliance last quarter, such as the availability of complaint forms, complaints being allowed to be in any form, and each complaint being resolved in writing.

The Monitor noted, however, four incidents where complainants alleged discouragement of their complaints. With three of these (CCRP Nos. 04170, 4184; and IIS No. 04037), the complaints were made and investigated. With the fourth incident, the complaint was not taken by the CPD, but was later taken by the CCA and investigated by both the CCA and the CPD.<sup>9</sup>

#### Status Update

In regards to the three identified cases above, the CPD did not sustain any allegations of officers discouraging the filing of complaints. The Monitor concurred with the CPD's findings in this area.

### **B. Means of Filing and Tracking Complaints**

Paragraphs 37 and 38 of the MOA deal with the tracking and filing of complaints.

#### Monitor's Previous Assessment

Nothing noted.

#### Status Update

Nothing to report.

### **C. Investigation of Complaints**

Paragraphs 39, 40, 41, 42, 43, 44, and 45 of the MOA deal with the investigation of complaints.

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<sup>9</sup> The Monitor makes no reference to a case number; we are unable to identify the case in the Monitor's Chapter 4 investigations.

## Monitor's Previous Assessment

### **IIS Investigations**

The Monitor makes no overall compliance determination regarding IIS investigations. The Monitor reviewed 18 IIS investigations last quarter. Of those, he commented that the “majority were complete and thorough and were in full compliance with the MOA requirements.”

The Monitor noted five cases, however, in which they had concerns. Most notably:

- In one case, the investigation did not appear consistent with the MOA requirement that complaints be evaluated “based on a preponderance of evidence standard. Greater credence appeared to be given to the subject officer’s statements. In addition, the discrepancies noted by the investigator between the statements of the officer and the other witnesses were not addressed in the investigation.”
- In a second case, there were witnesses and complainants who were not interviewed.
- In a third, the District sergeant who conducted the investigation routinely asked leading questions of civilian witnesses.
- In a fourth, inconsistencies in statements were not explored.
- In a fifth, neither the investigator nor Command addressed questions regarding whether CPD policy permits use of profanity in encounters with citizens.

### **CCRP Investigations**

The Monitor makes no overall compliance determination regarding CCRP investigations. The Monitor reviewed 11 CCRP investigations last quarter. He stated, “While many were in compliance with the MOA requirements, there were two cases that involved use of force allegations, and should have been investigated by IIS; there was one investigation where a relevant witness was not interviewed; and two investigations where the investigating supervisor was involved in the incident.”

## Status Update

### **IIS Investigations**

Review of the data of IIS cases closed during the fourth quarter of 2004 revealed a total of 86 cases were cleared during this timeframe. Of those 86 cases, 48 exceeded the 90-day investigative requirement.

A summary of closed IIS cases during this quarter is included in Appendix Item 18.



## **CCRP Investigations**

Review of the data of CCRP cases closed during the fourth quarter of 2004 revealed a total of 71 cases were cleared during this time frame. Of those 71 cases, 10 exceeded the 90-day investigative requirement.

A summary of closed CCRP cases during this quarter is included in Appendix Item 19.

### **D. Adjudication of Complaints**

#### Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with the MOA requirement that each complaint be closed by one of the four dispositions: sustained (including sustained-other), not sustained, unfounded or exonerated.

#### Status Update

#### **IIS Cases**

During the fourth quarter of 2004, 86 cases involving 160 allegations were investigated and closed by IIS. Those cases were closed as follows:

Sustained	36
Sustained Other	11
Exonerated	30
Not Sustained	34
Unfounded	49

#### **CCRP Cases**

During the fourth quarter of 2004, 71 cases were investigated and closed through the CCRP process. Those cases were closed as follows:

Sustained	15
Sustained Other	2
Exonerated	11
Not Sustained	19
Unfounded	24

Additionally, this quarter the CPD received and processed 45 reports of favorable officer conduct reported on positive contact forms. In addition, there were 88 letters of commendation received recognizing the outstanding performance of 128 officers.

## **E. CCA**

### Monitor's Previous Assessment

#### **a. General Operations**

The Monitor found the City to be in compliance with this provision of the CCA.

#### **b. Sample Investigations**

The Monitor reviewed the investigative files in nine CCA investigations last quarter. The Monitor has not yet been able to obtain data regarding actions taken after the City Manager has agreed with a sustained determination by the CCA. Thus, the Monitor could not determine whether the City is in compliance with the provision requiring the City to take "appropriate action, including imposing discipline and providing for non-disciplinary action where warranted."

### Status Update

As discussed at the January All Parties Meeting, IIS is working in conjunction with CCA to develop and complete a matrix that contains the following information for each case investigation:

- CCA#/IIS#
- Complainant Name
- Incident date
- Allegation
- Officer's Name
- CCA Disposition
- IIS Disposition
- CPD Action
- City Manager's Action

At the present, the matrix only contains those cases where the CCA and IIS disagree on the disposition. (The actual number of cases falling within that category is estimated to be between 8 – 10% of all cases.) Until the Employee Tracking Solutions system is able to query cases, the matrix information must be tabulated by hand. Once the analysis component of ETS is fully operational, this information will be available electronically.

## **VI. Management and Supervision**

### **A. Risk Management and Supervision**

Paragraphs 57-66 of the MOA are relevant to risk management and supervision.

#### Monitor's Previous Assessment

##### **a. ETS**

The Monitor could not determine last quarter whether the CPD was in compliance with the MOA requirements for implementing the ETS, given the cancellation of the ETS demonstration. The vendor was not prepared to give a demonstration.

##### **b. Manual Risk Management System**

The Monitor concluded that the CPD was in compliance with this requirement.

#### Status Update

##### **a. ETS**

The ETS system went live on October 1, 2004, at 1201 hours. On that date, supervisors began entering data into the database. To date, there have been approximately 4700 cases entered into the system.

Motorola (formally CRISNET) is the vendor. They are currently working on the data conversion for all the old data to be imported into the system. This is expected to be completed during the end of January 2005.

Motorola has to make some corrections and modifications to the system. One of the corrections is to the analysis tools and the calculations of the risk-associated-weights to figure the standard deviations. In addition, these corrections and modifications will make the system easier to use and more organized, thus providing better information to the supervisors. It is expected that most of the corrections and modifications will be completed by the end of January 2005.

After the data conversion and the analysis tools have been corrected, the Department will perform a test analysis. This analysis, for the fourth quarter of 2004, will be used to refine the analysis process. The first official analysis will occur in April 2005 based on first quarter statistics.

## **b. Department Risk Management System (DRMS)**

The implementation of the ETS this quarter has made the DRMS system obsolete. As stated above, once the data conversion is complete and the analysis portion of the ETS system is refined, ETS will compare the performance of employees assigned to similar organizational and/or peer groups. When used in conjunction with regularly scheduled reviews, supervisors will be able to use this system to assist in the evaluation of employee performance in attention to recognizing individual and group patterns which may warrant further review or intervention (based on standard deviations).

## **B. Audit Procedures**

Paragraphs 67-69 of the MOA deal with Audit Procedures.

### Monitor's Previous Assessment

The Monitor makes no definitive determination of compliance with regards to this provision. He noted improvements in the CCRP audit process, such as documenting which CCRP cases were reviewed and Inspections' attempts to contact and follow-up with complainants. The Monitor stated, "We believe these improvements move CPD toward compliance with the CCRP audit requirement." The Monitor stated it is unclear how the cases were chosen, and whether there is an audit checklist for the cases audited that documents the audit's findings. Also, there was one CCRP case audited that the Monitor also reviewed in which a relevant witness did not appear to be interviewed.

### Status Update

#### **CCRP Audit**

In response to the Monitor's question as to how the cases are chosen for the audit, Inspections Section uses random sampling. Inspections uses the four bulleted points listed below as their checklist for each case.

Inspections Section has reviewed the Citizen Complaint Resolution Process (CCRP) for the fourth quarter of 2004. Eighty complaints were filed with the Department from October through December. A random audit of 19 cases was conducted on the closed investigations.

Inspections Section reviewed the following criteria:

- Ensure CCRP complaints were entered into the database and the case files were maintained in a central area for each district, section, and unit.
- Ensure necessary documentation was completed for each CCRP investigation.
- Ensure all files contained the appropriate documents.

- Ensure the investigating supervisor notified the complainant of the disposition and whether any corrective or disciplinary action was taken.

Additionally, Inspections Section randomly contacted complainants to evaluate whether their actions and views were accurately captured in the CCRP reports.

The audit revealed that all CCRP investigations reviewed were in compliance with the criteria set forth above, with the exception of one case reviewed from District One. The complainant alleged he was never notified of the case disposition by the investigating supervisor. A follow-up will be done on this case.

A summary of the audit was prepared on January 19, 2005, and is included in Appendix Item 20.

### **IIS Audit**

The Inspections Section conducted a semi-annual audit of cases resolved by IIS. The audit reviewed cases cleared from July 1, 2004 through December 31, 2004. Pursuant to the requirements outlined in the Inspections Section's Standard Operating Policies and Procedure #1.54, the audit found that the cases reviewed were in compliance with the policies, procedure, and standards of the CPD.

A summary of the audit was prepared on January 19, 2005, and is included in Appendix Item 21.

The CPD also had conversations with representatives from both the City and County Prosecutor's Offices to discuss individual and/or collective officer performance issues. Both Mr. Ernest McAdams, from the City Prosecutor's Office, and Mr. Karl Kadon, from the Hamilton County Prosecutor's Office, stated there are currently no areas of concern pertaining to officer, shift, or unit performance.

### **C. Video Cameras**

MOA paragraphs 70-72 deal with video camera requirements.

#### Monitor's Previous Assessment

The Monitor found that the CPD "is still not yet in full compliance," citing the fact that all police vehicles are not MVR equipped.

The Monitor stated, "In previous Reports we noted that while the CPD appears to be conducting the required random reviews of videotapes, it was unclear whether these reviews generated any outcomes, in terms of changes in tactics, training, counseling of officers or otherwise. The Monitor is still unsure as to what, if anything, has resulted from any information learned or observed during these random reviews."

## Status Update

### **Video Camera Implementation**

Currently, all but 36 of the CPD's 236 marked units are not equipped with a MVR. The CPD anticipates fully outfitting all marked vehicles with a camera system during 2005 as the budgeted money becomes available.

### **MVR Review**

Paragraph 72 states, "The CPD will continue to conduct periodic random reviews of mobile camera videotapes for training and integrity purposes. Supervisors conducting these reviews will document their activity in a log book. In addition, CPD will require periodic random surveys of mobile video recorder equipment to confirm that it is in proper working order."

The CPD believes that this is an example of the Monitor extending the scope of his review beyond the letter of the provision. MOA paragraphs 70 through 72 do not require the CPD to document the outcome of such reviews. The only requirement is for the CPD to conduct these reviews and document them in a log book. The CPD recommends further review of this monitoring standard within the discussion of the overall compliance standards, particularly definitions and data sources.

## **D. Police Communications Technology**

MOA paragraphs 73 and 74 relate to police communications technology.

### Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with these provisions.

## Status Update

### ➤ **Radio Replacement – 800 MHz Project**

Motorola estimates completion of the infrastructure in March 2005. Delays in system activation resulted from Federal Communication Commission permit requirements delaying the construction of necessary towers in Northern Kentucky.

Training on the new radio system will begin during March of 2005, and the system is scheduled to go on line in late April 2005.

### ➤ **New Communications Facilities**

#### Radcliff Building

Renovations of the initial building have been completed. Communications equipment and related phone lines have been installed and are awaiting connection to the 800 MHz system.

Communications personnel will activate and establish occupancy of the facility in two phases. Emergency Call Service (911 Calls) will be operational during March 2005. Dispatch functions will be transferred and operational in early May 2005.

Expansion of the facility has resulted in the construction of the Cincinnati-Hamilton County Regional Operations Center. Construction is scheduled for completion during the fourth quarter of 2005. Additional units now housed at the facility include the Terrorism Early Warning Group.

#### Spinney Building

Construction related to renovations of the back-up site was completed in 2004. Training for two classes of new Communications employees have been conducted at the facility. Motorola and the Telecommunications Department continue to install support hardware and software at the facility.

#### ➤ **Emergency 911 Phone System Replacement**

Cincinnati Bell / Palladium completed installation of the new phone system during December 2004. Training is scheduled for March 2005.

#### ➤ **Computer Aided Dispatch (CAD) Replacement**

The CPD is currently reviewing vendor demonstrations as a result of the RFP for the new CAD and Records Management System (RMS). The CPD expects to choose the vendor in February 2005 and begin negotiations the following month.

### **E. Discipline and Promotional Policy**

MOA paragraphs 75-76 are relevant to discipline and promotional policy.

#### Monitor's Previous Assessment

The Monitor makes no compliance determination with these provisions.

#### **Tracking of Penalties**

The Monitor states "the CPD has not had the capabilities to track electronically the disciplinary penalties imposed in each cases where a violation of policy has been sustained. Now that the ETS system is in process of being implemented, however, we expect this data will be available, and the Monitor will be able to assess compliance."

#### **Progressive Discipline**

The CPD had commented in their November 12, 2004 report to the Monitor that an officer can appeal discipline involving a written reprimand and/or a suspension of up to three days to a Peer Review Panel. The Peer Review Panel

is a contractual issue with the FOP. The Panel is not required to follow the progressive discipline process for repeat violations of the same section of the matrix.

The Monitor writes in their current Report, “While we recognize that the Peer Review Panel is a contractual issue with the FOP, under paragraph 6 of the MOA, this fact does not eliminate the City’s obligation to implement an MOA provision, including progressive discipline for repeat violations.”

### **CCA Outcomes versus IIS Outcomes**

The Monitor raised the concern in prior Reports regarding those cases where the CCA sustained an allegation that was determined by the CPD to be not sustained, exonerated, or unfounded. “While the City has stated that the City Manager is now reviewing both sets of investigative files to make her final determination, it is not clear that the City resolved this issue for prior cases with conflicting findings.”

### **Status Update**

#### **Progressive Discipline**

Paragraph 6 states that nothing in the Agreement is intended to alter a Collective Bargaining Agreement and the DOJ and the City “have attempted to draft this Agreement to avoid impairing the rights of Queen City Lodge No. 69 of the Fraternal Order of Police under the Collective Bargaining Agreement.”

Paragraph 6 goes on to say, “However, a determination that any such right is impaired shall not excuse the City and the CPD from a failure to implement any provision of the Agreement.”

The CPD believes it has complied with provisions 75 and 76 by revising its disciplinary matrix to include progressive discipline, and that compliance should be determined as it relates to the “process” rather than the “outcomes.”

The CPD intends to address this matter with the Monitor at the next All-Parties meeting.

### **CCA Outcomes versus IIS Outcomes**

See the CPD’s response in the CCA segment under the Citizen Complaint section.



## **VII. TRAINING**

### **A. Use of Force – Management Oversight and Curriculum**

MOA paragraphs 77 – 87 are relevant to management oversight of training and training curriculum.

#### Monitor's Previous Assessment

The CPD remains in compliance with this provision.

#### Status Update

All supervisors received a Tactical Skills Review as part of Management Training in the fourth quarter. This block of instruction included Use of Force decision making utilizing the FATS system as well as Simmunitions scenarios. The block also included skills practice reference TASER, PR-24, and handcuffing. In addition, use of force was covered multiple times in the Roll Call Training Program.

Based on input from the various training sessions, the Police Academy conducted another needs assessment for training. Various training items were discussed at the Training Committee meeting held on November 4, 2004. A summary of the meeting is included in Appendix Item 22.

### **B. Handling Citizen Complaints**

MOA paragraph 82 is relevant to citizen complaint training.

#### Monitor's Previous Assessment

No compliance determination was made by the Monitor. The citizen's complaint process was last covered in training for new supervisors in April 2004. The Monitor did not observe that training.

#### Status Update

New supervisors training is expected to occur during the first part of 2005. The Monitor will be notified when that training will occur.

### **C. Leadership/Command Accountability Training**

#### Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with this MOA provision.

#### Status Update

Lieutenant Howard Rahtz completed the Police Executive leadership College (PELC) Program in October. Lieutenant Teresa Theetge and Sergeant Dominic Gulliford graduated from the Southern Police Institute Administrative Officer's Course in November 2004.

#### **D. Canine Training**

MOA paragraph 84 is relevant to canine training

#### Monitor's Previous Assessment

The Monitor has determined that the CPD is in compliance with the MOA training provisions.

#### Status Update

Nothing to report.

#### **F. Scenario Based Training**

MOA paragraph 85 is relevant to scenario-based training.

#### Monitor's Previous Assessment

The CPD remains in compliance with this provision.

#### Status Update

During the fourth quarter of 2004, the CPD provided 1,696.2 hours of Roll Call Training. Several new scenarios taken from CPD incidents were added to the library. Other areas reviewed include:

- Search and Seizure
- QUAD (Quick Action Deployment strategy)
- Procedure 12.545 Use of Force
- Procedure 12.555 Arrest/Citation

The Roll Call Training calendars and summary for this quarter have been included in Appendix Items 23 and 24.

#### **E. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct**

MOA paragraph 86 is relevant to training based on civil lawsuits.

#### Monitor's Previous Assessment

The CPD is in compliance with this provision.

#### Status Update

The quarterly meeting between the City Solicitor's office and the CPD took place on January 12, 2005. The following items were discussed:

- The CPD's legal liaisons discussed legal updates and police issues with supervisors and officers during the recent in-service training.
- The Law Department is organizing a litigation group that focuses on police issues. The group will discuss ways to improve communications with the police regarding legal updates, prevention issues, and avoiding potential lawsuits.
- Updates were given on two court cases the CPD is involved with.

The minutes from the meeting have been included in Appendix Item 25.

### **G. Orientation to the MOA**

MOA paragraph 87 is relevant to MOA orientation training.

#### Monitor's Previous Assessment

The Monitor had nothing to report regarding this provision and made no compliance determination.

#### Status Update

The annual in-service training for supervisors and officers occurred in the fourth quarter of 2004 and the first quarter of 2005. A block of instruction centered on overviews and updates on the MOA and CA.

A copy of the PowerPoint presentation regarding the CA and the outline of the MOA presentation are included in Appendix Items 26 and 27.

### **H. Field Training Officers**

MOA Paragraphs 88-89 deal with the training of field training officers.

#### Monitor's Previous Assessment

The Monitor had nothing to report regarding this provision and made no compliance determination.

### Status Update

The FTO Committee met on December 2, 2004. The minutes from the meeting have been included in Appendix Item 28.

### **I. Firearms Training**

MOA paragraphs 90-91 are relevant to firearms training.

### Monitor's Previous Assessment

The CPD remains in compliance with these MOA provisions.

### Status Update

Annual firearms qualifications continued during the fourth quarter. In addition to the qualifications course, participants also review the Use of Force and Shots Fired policy and demonstrate proficiency with less than lethal force options such as the beanbag shotgun, Pepperball launcher, etc.

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